IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 14524 of 2005

Between:

Sri Durga Malleswara Educational Society, Rep by its Secretary G. Prajapathi Rao,S/o. Venkata Appa Rao, Aged 75 years, R/o. Vijayawada, Krishna District.

..... PETITIONER

AND

The Vijayawada Municipal Corporation, Rep by its Commissioner, Vijayawada, Krishna District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus declaring the impugned action of the respondent in issuing impugned proceedings G6BA No. 352/2005, dated 9-2-2005 whereunder the respondent returned the application filed by the petitioner for grant of building permission as highly illegal, arbitrary and violative of Art. 14 of the Constitution of India and also contrary to the provisions of Vijayawada Municipal Corporation Act and rules made thereunder and consequently direct the respondent to grant permission for construction of the building by accepting the plan submitted by the petitioner as per the provisions of Vijayawada Municipal Corporation Act and pass such other order or orders in the interest of justice.

Counsel for the Petitioner:MR.G.V.SHIVAJI

Counsel for the Respondents: G.JHANSI

The Court made the following:

O R D E R:

This writ petition is filed under Article 226 of the Constitution of India seeking a Mandamus, declaring the impugned proceedings GLBA No.352/2005, dated 9-2-2005 issued by the respondent as illegal, arbitrary.

The petitioner herein is the Educational Society. In the affidavit filed in support of the writ petition it is stated that the petitioner–Society purchased Ac.05.11 cents of land situated in Revenue Ward No.11, Block No.1, N.T.S.No.13 under an agreement of sale from the vendor by name Boyapati Sreenivasa Appa Rao. Since then the petitioner-society is having absolute right over the above said property. The son of the said Vendor, with an evil intention to get a collusive suit, filed O.S.No.253 of 1998, on the file of the III Additional District Judge, Vijayawada. The learned District Judge dismissed the said suit declaring that the petitioner-society is having absolute right over the above said property. In order to construct a new building in the above said land, the petitioner-society applied for building permission from the respondent-Corporation. But the respondent-Corporation returned the said application for grant of building permission stating that as per the town survey records, proposed roads were marked in the land of the petitioner-society. In view of the same, the respondent-Corporation issued impugned proceedings. Thereafter, the petitioner-society submitted a representation dated 20-05-2005 bringing to the notice of the respondent-Corporation about the master plan prepared in the year 1974, which does not show any road in the land belongs to the petitioner-society and again submitted the plan for consideration. The grievance of the petitioner is that the respondent-corporation did not take any action on the representation dated 20-05-2005 as well as did not state any reason for return of the plan. Questioning the said inaction of the respondent-Corporation, the present writ petition has been filed by the petitioner-society.

Heard both sides.

I have perused the material available on record.

On a perusal of the order impugned, it is stated that since there were pending Court cases regarding unauthorized constructions against the petitioner-society and that as per the town survey records, the proposed roads falling in the applicant's site and therefore, the application for building permission is returned and may be resubmit the same duly showing the roads after withdrawal of the Court cases. The impugned order, itself is clear that after withdrawal of the Court cases, the petitioner may resubmit the application for grant of building permission. It is also pertinent to note that the civil suit is disposed of on 20-11-2004, whereas the respondent-corporation passed the impugned proceedings
on 09-02-2005 wherein the corporation did not take into consideration the disposal of the civil suit. Further it is to be noticed that the petitioner-society stated that the master plan published in the year 1974, does not show any roads in the land of the petitioner and as per the plan, the petitioner-society intended to construct buildings.

Viewed from any angle, the impugned order is liable to be set aside and is accordingly set aside. Further the respondent-corporation is directed to receive the earlier application as well as the representation dated 20-05-2005 made by the petitioner for building permission in response to the rejection of his application for consideration. On receipt of the same, after giving an opportunity to the petitioner-society, the respondent-corporation is directed to dispose of the same in accordance with law within a period of four weeks from the date of receipt of a copy of the order.

With the above direction, the writ petition is disposed of. No costs.

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06-07-2005

Mjl/*

To,

1. The Commissioner, Vijayawada Municipal Corporation,

Vijayawada, Krishna District.

2. 2 CD copies

*Form-NIC-OGS/WP{**RLD**}*